

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Francisco Cervantes, et al.,

NO. C 08-03817 JW

Plaintiffs,

**ORDER DENYING MOTION TO DISMISS
AND FOR A MORE DEFINITE
STATEMENT AS MOOT**

v.

Liu Cheng, Inc., et al.,

Defendants.

Presently before the Court is Defendants Liu Cheng, Inc., Cheng Li Chin, Lin Jean and Lie Hai Ping's (collectively, "Defendants") Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) and For a More Definite Statement Pursuant to Fed. R. Civ. P. 12(e).¹ (hereafter, "Motion," Docket Item No. 6.) The Individual Defendants move to dismiss Plaintiffs' First, Third, Fourth, Fifth and Sixth Causes of Action under Cal. Labor Code §§ 201, 226, 226.7 and 510, and Cal. Bus. & Prof. Code § 17200 on the ground that Plaintiffs cannot bring such claims against individual managers and officers of a corporate employer. (Motion at 4-5.) All Defendants move for a more definite statement on the ground that Plaintiffs do not distinguish between any of the Defendants with respect to the conduct alleged. (Motion at 5.)

On January 18, 2009, after Defendants' filed their Motion, Plaintiffs filed an Amended Complaint. (See Docket Item No. 12.)

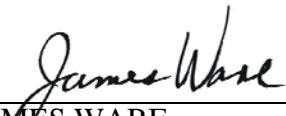
¹ Defendants Chin, Jean and Ping are collectively referred to as "Individual Defendants."

1 Rule 15(a) provides that a party may amend his pleading once as a matter of course at any
2 time before a responsive pleading is served. A motion to dismiss is not a responsive pleading within
3 the meaning of Rule 15(a). See Fed. R. Civ. P. 15(a); Allwaste, Inc. v. Hecht, 65 F.3d 1523, 1530
4 (9th Cir. 1995).

5 Accordingly, the Court DENIES Defendants' Motion to Dismiss Pursuant to Fed. R. Civ. P.
6 12(b)(6) and For a More Definite Statement Pursuant to Fed. R. Civ. P. 12(e) as moot. The January
7 26, 2009 hearing on the Motion is VACATED.

8 The Court sets a Case Management Conference for **February 23, 2009 at 10 a.m.** On or
9 before **February 13, 2009**, the parties shall meet and confer and file a Joint Case Management
10 Statement. The Statement shall include, among other things, a good faith discovery plan with a
11 proposed date for the close of all discovery.

12
13 Dated: January 22, 2009



JAMES WARE
United States District Judge

THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

Adam Wang waqw@sbcglobal.net
Charles Hyunchul Jung cjung@nassiri-jung.com
Kassra Powell Nassiri knassiri@nassiri-jung.com

Dated: January 22, 2009

Richard W. Wieking, Clerk

**By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy**